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| 10/633,937      | 08/04/2003  | Jack J. Johnson      | 33472/1             | 5798             |

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| EXAMINER |
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BORISSOV, IGOR N

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3628

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01/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/633,937

**Applicant(s)**

JOHNSON ET AL.

**Examiner**

Igor N. Borissov

**Art Unit**

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-25,27-35,49-57,59-72,74-95 and 97-130 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-25,27-35,49-57,59-72,74-95 and 97-130 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2007 has been entered.

### ***Response to Amendment***

Amendment received on 10/22/2007 is acknowledged and entered. Claims 8, 26, 36-48, 58, 73 and 96 have been cancelled. Claims 1, 4-7, 9-20 C. 9, L. 22-28, 23-25, 29-32, 49, 52-54, 56, 61-64, 66-69, 71, 77-80, 82, 85, 86, 88-90, and 92-94 have been amended. New claims 97-130 has been added. Claims 1-7, 9-25, 27-35, 49-57, 59-72, 74-95 and 97-130 are currently pending in the application.

### **Remarks**

In view of broadening the scope of the claims, the previously indicated allowability of certain features of the claims have been reconsidered. Furthermore, Applicants in their Remarks of 10/22/2007, Page 37, made following statement:

"Claim 1 is also amended to refer to a "first" portion of the plurality of energy Providers and a "second" portion of the plurality of energy Providers. *Such amendment is for the purposes of clarification, e.g., antecedent basis. However, the "first" portion and the "second" portion shall not be construed so as to necessarily require mutually exclusive sets of providers, partially overlapping sets of providers, and/or completely overlapping sets of providers.* "

In view of said statement, the Examiner does not give patentable weight to the terms "first" and "second", and for the purposes of examinations the phrase "first"

*portion* of the plurality of energy Providers and a "second" *portion* of the plurality of energy Providers are understood as merely "a *portion* of energy Providers".

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 123-130 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 123 recites the following limitation:

"e. designating, on the basis of the processed bid information, *at least two Providers* of the plurality of energy Providers to supply *at least a portion of the electric power or natural gas needed by the at least one end user* for use at at least one end-user facility during a specific future time interval, such that the at least two Providers, when their respective designations to supply are summed, *are designated to supply 100% of the electric power or natural gas needed by the at least one end user* for use at the at least one end-user facility during the specific future time interval.", which is confusing. Under the "broadest reasonable interpretation", the claim could be understood that 100% of summed supply is in contradiction to of *at least a portion* of the power needed. For purposes of examination, the Examiner understands the phrase:

"e. designating, on the basis of the processed bid information, at least two Providers of the plurality of energy Providers to supply at least a portion of the electric power or natural gas needed by the at least one end user" as following:

"e. designating, on the basis of the processed bid information, at least two Providers of the plurality of energy Providers, each of said at least two Providers to supply at least a portion of the electric power or natural gas needed by the at least one end user". Same reasoning applied to claims 124-130.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 6, 7, 9, 10, 12, 13, 15-22, 25, 27, 29, 31-35, 49-52, 55-57, 59, 61, 62, 64-66, 68, 70-72, 74, 75, 77, 78, 80-87, 90, 92, 97-99, 101, 102, 105, 106, 108-117 and 120-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. (US 4,677,552) in view of Ausubel (US 6,026,383).**

**Independent Claims**

Sibley, Jr. (Sibley) teaches a computer-implemented method and system for automated bidding process, said method comprising:

**Claims 1, 20, 49, 68, 86, 102, and 113,**

transmitting at least a portion of historical energy usage data associated with the at least one customer of the at least one reseller to at least a first portion of a plurality of energy Providers (C. 5, L. 41-51); C. 9, L. 22-28

receiving bids (from the plurality of participants) to provide electric power or natural gas to the at least one reseller for use by the at least one customer of the at least one reseller, (Fig. 8),

processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first bidding data (C. 3, L. 4-15; C. 5, L. 52-60);

transmitting at least a portion of said first bidding data (processed data) to at least a (second) portion of energy Providers (participants of the auction) (C. 12, L. 14-18);

designating at least one Provider of the plurality of energy Providers to provide electric power or natural gas to the at least one reseller for use by the at least one customer, with each designated Provider to supply at least a portion of the electric power or natural gas needed by the at least one customer during at least a portion of a specific future time interval (determining a winner) (C. 12, L. 14-18).

While Sibley teaches bidding for providing oil and gasoline, Sibley does not specifically teach electric power or natural gas. However, it is old and well known that electric power or natural gas as well as oil and gasoline are used as energy source. Therefore, it would have Sibley been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include that said bids for providing energy include bids for providing electric power or natural gas, because it would advantageously allow participants to choose a source of energy which is the most suitable for a particular geographical area.

Also, Sibley, while teaching transmitting at least a portion data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51), does not specifically teach that said data includes at least a portion of *historical energy usage data* associated with the at least one customer.

Ausubel teaches a computer-implemented method and system for automated bidding process, including transmitting bidding history information (*historical energy usage data*) associated with the at least one participant of the trade exchange to at least a portion of other participants of the trade exchange, wherein said bidding history information includes quantities demanded by the at least one participant in prior rounds (C. 6, L. 5-6, 20-24, 29-43; C. 9, L. 22-28).

It would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include transmitting historical energy usage data associated with the at least one reseller, or with the at least one customer, to at least a portion of the plurality of energy providers, as disclosed in Ausubel, because it would advantageously allow the participants to estimate each other's demand or supply curve which is needed for making trading decisions, as specifically stated in Ausubel (C. 3, L.

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53-65). Also, Ausubel points out that transmitting said information would cause bidders to bid more aggressively than otherwise (C. 2, L. 35-36). Furthermore, in this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, –USPQ2d–, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Furthermore, both Sibley and Ausubel specify that said system can be implemented based on one central computer, or use a plurality adjunct or remotely located computers. C. 9, L. 22-28

#### Dependent Claims

**Claims 2, 21 and 50.** Said method and system, wherein the at least one customer includes at least one user (C. 3, L. 4-15). Sibley does not specifically teach that said user is the *end* user. However, the method steps disclosed are not affected who the user is. Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley to include that said user is the *end* user, because it would advantageously allow to expand the audience of traders, thereby increase revenue.

**Claims 3, 22, 51, 108, 109, 119.** See reasoning applied to Claims 2, 21 and 37.

**Claims 13, 16, 29, 62, 65, 78, and 80.** Conducting a trade of energy via the auction indicates ability to supply the contracted volume of energy.

**Claims 6, 15, 25, 31, 55, 64 and 90.** Said method and system wherein the auction rules include bid formulation requirements specifying the required elements that must be reflected in the bid for the moderating computer to consider the bid valid (conducting the auction under the U. S. trading rules enforced by the Securities and Exchange Commission) (C. 5, L. 52-60).

**Claims 7, 56, 70 and 71.** Said method, in which the bid formulation requirements specify that all bids indicate the quantity of energy and a specific price (Sibley; C. 7, L. 66-67).

**Claims 9, 12, 59, 61, 77 and 92.** See reasoning applied to Claim 1.

**Claims 10, 27 and 75.** Receiving decision rules and processing at least a portion of the first bidding data and the decision rules, and designating at least a first energy provider (Sibley; C. 3, L. 4-15; C. 5, L. 52-60).

**Claims 81 and 83-85.** See reasoning applied to Claim 68.

**Claims 17, 66 and 82.** Conducting a trade of energy via the auction indicates contracting for energy and providing for supply at least a portion of the electric power or natural gas needed by the at least one reseller, or by the at least one customer, during the specific future time interval.

**Claim 18.** See reasoning applied to Claim 1.

**Claims 19, 34, 35.** Said method and system in which at least a portion of the processing and communications functions of the central host (moderating computer) or the local exchange computer (first control computer) are performed by at least one adjunct computer (Sibley; C. 6, L. 30-33).

**Claims 32 and 33.** See reasoning applied to Claim 20.

**Claims 57 and 72.** See reasoning applied to Claims 49 and 86.

**Claims 52 and 87.** See reasoning applied to Claims 49 and 86.

**Claim 74.** See reasoning applied to Claim 68.

**Claims 97-99, 101, 105, 106, 108, 111, 112, 114-117 and 120-122.** See reasoning applied above.



**Claims 4, 5, 14, 23, 24, 30, 53, 54, 63, 67, 69, 79, 88, 89, 93, 100, 103, 104, 107, 118 and 123-130 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Ausubel and further if view of Silverman et al. (US 5,136,501).**

*Independent Claims*

**Claims 123 and 130,**

Sibley teaches said computer-implemented method and system for automated bidding process, said method comprising:

transmitting at least a portion of historical energy usage data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51); C. 9, L. 22-28

receiving bids (from the plurality of participants) to provide electric power or natural gas to the at least one reseller for use by the at least one customer of the at least one reseller, (Fig. 8),

processing the bids in accordance with the auction rules to produce processed bid data, and storing the bids and the processed bid data in a data base of the moderating computer as first bidding data (C. 3, L. 4-15; C. 5, L. 52-60);

transmitting at least a portion of said first bidding data (processed data) to at least a (second) portion of energy Providers (participants of the auction) (C. 12, L. 14-18);

designating at least one Provider of the plurality of energy Providers to provide electric power or natural gas to the at least one reseller for use by the at least one customer, with each designated Provider to supply at least a portion of the electric power or natural gas needed by the at least one customer during at least a portion of a specific future time interval (determining a winner) (C. 12, L. 14-18).

While Sibley teaches bidding for providing oil and gasoline, Sibley does not specifically teach electric power or natural gas. However, it is old and well known that electric power or natural gas as well as oil and gasoline are used as energy source. Therefore, it would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include that said bids for providing energy include bids for providing electric power or natural gas, because it would advantageously allow participants to choose a source of energy which is the most suitable for a particular geographical area.

Also, Sibley, while teaching transmitting at least a portion data associated with the at least one customer of the at least one reseller to at least a first portion of the plurality of energy Providers (C. 5, L. 41-51), does not specifically teach that said data includes at least a portion of *historical energy usage data* associated with the at least one customer.

Ausubel teaches a computer-implemented method and system for automated bidding process, including transmitting bidding history information (*historical energy usage data*) associated with the at least one participant of the trade exchange to at least a portion of other participants of the trade exchange, wherein said bidding history information includes quantities demanded by the at least one participant in prior rounds (C. 6, L. 5-6, 20-24, 29-43; C. 9, L. 22-28).

It would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley to include transmitting historical energy usage data associated with the at least one reseller, or with the at least one customer, to at least a portion of the plurality of energy providers, as disclosed in Ausubel, because it would advantageously allow the participants to estimate each other's demand or supply curve which is needed for making trading decisions, as specifically stated in Ausubel (C. 3, L. 53-65). Also, Ausubel points out that transmitting said information would cause bidders to bid more aggressively then otherwise (C. 2, L. 35-36).

Also, Sibley and Ausubel does not explicitly teach that said designated step includes: designating, on the basis of the processed bid information, *at least two*

*Providers* of the plurality of energy Providers to supply electric power or natural gas needed by the at least one end user.

Silverman et al. teaches a computer-implemented method and system for automated bidding process for commodities market, said method disclosing accepting a matching (by price) bid, and if order is not filled, continuing to accept multiple matching bids from multiple bidders until the order is filled (C. 21, L. 9-29). Furthermore, "accepting multiple matching bids from multiple bidders *until the order is filled*" suggests "100% power needed" feature.

In this case, each of the elements of the cited references combined by the Examiner performs the same function when combined as it does in the prior art. Thus, such a combination would have yielded predictable results. See *Sakraida*, 425 U.S. at 282, 189 USPQ at 453. Therefore, Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* (KSR, 82 USPQ2d at 1396) forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the recent Board decision *Ex arte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007).

Furthermore, both Sibley and Ausubel specify that said system can be implemented based on one central computer, or use a plurality adjunct or remotely located computers. C. 9, L. 22-28

*Dependent Claims*

**Claims 4, 5, 14, 23, 24, 30, 53, 54, 63, 67, 69, 79, 88, 89, 93, 100, 103, 104, 107, 118, 124-128.** Same reasoning as applied to claims 123 and 130.

**Claims 11, 28, 60, 76 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Ausubel and further if view of Mistr, Jr. (US 5,794,212).**

*Dependent Claims*

**Claims 11, 28, 60, 76 and 91.** Sibley in view of Ausubel teaches all the limitations of Claims 11, 28, 60, 76 and 91, except specifically teaching notifying a first DISCO (distributor) serving the at least one reseller, or serving the at least one customer, of the designation of at least a first designated provider.

Mistr, Jr. (Mistr) teaches a method and system for conducting transactions between energy suppliers, buyers and transmission suppliers (distributors), wherein information regarding said energy transaction is communicated to all parties (Abstract).

It would have been obvious to one having ordinary skill in art the time the invention was made to modify Sibley in view of Ausubel to include notifying a distributor serving the at least one reseller, or serving the at least one customer regarding energy transaction, as disclosed in Mistr, because it would advantageously allow to identify and analyze the available transmission paths, thereby providing cost-efficient movement of energy, as specifically stated in Mistr (C. 4, L. 55-58).

**Claim 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Ausubel and further if view of Witek et al. (US 6,253,188).**

*Dependent Claim*

**Claim 94.** Sibley in view of Ausubel teaches all the limitations of claims 94, including using the trade exchange over the wide area network, except explicitly teaching that said distributing includes posting the processed request on a website or computer bulletin board accessible to the providers.

Witek et al. (Witek) teaches a method for distributing or processed data, wherein said data is posted on a Web page (posing of selected ads in a designated section of a Web newspaper) (See: Summary).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley in view of Ausubel to include that said distributing includes posting the processed request on a website or computer bulletin board accessible to the providers, as disclosed in Witek, because it would advantageously allow to present said data to a plurality of users simultaneously.

**Claim 95 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sibley, Jr. in view of Ausubel and further if view of Geller et al. (US 6,300,948).**

*Dependent Claim*

**Claim 95.** Sibley in view of Ausubel teaches all the limitations of claims 95, except specifically teaching that said bids are received by means of a software defined template.

Geller et al. (Geller) teaches a method for creating and using a user interface, wherein information from the user is obtained via a software defined template (c. 21, L. 8-21).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sibley in view of Ausubel to include that said bids are received by means of a software defined template, as disclosed in Geller, because it would advantageously allow to automate processing of data, thereby save time.

***Response to Arguments***

There is no argument was presented in the Applicant's communication of 10/22/2007.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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